

State of California
BOARD OF EQUALIZATION
DIESEL FUEL TAX REGULATIONS

Regulation 1421. SUCCESSOR'S LIABILITY.

Reference: Revenue and Taxation Code Sections 60471, 60472, 60473, and 60474.

(a) DUTY TO WITHHOLD FROM THE PURCHASE PRICE. The requirement that a successor or purchaser of a business or stock of goods withhold a sufficient amount of the purchase price to cover the tax liability of the seller, arises only in the case of the purchase and sale of a business or stock of goods under a contract, which provides for the payment to be made to the seller or to a person designated by the seller of a purchase price consisting of money or property or the assumption of liabilities and only to the extent thereof, and does not arise in connection with other transfers of a business such as assignments for the benefit of creditors, foreclosures of mortgages, or sales by trustees in bankruptcy.

(b) AMOUNTS TO WHICH LIABILITY EXTENDS. The liability of the successor or purchaser of a business or stock of goods extends to amounts incurred with reference to the operation of the business by the predecessor or any former owner, including the sale thereof, even though not then determined against the former owner, which include taxes, interest thereon to the date of payment of the taxes, and penalties, including penalties for nonpayment of taxes, negligence, intentional disregard, fraud, or intent to evade the tax.

(c) RELEASE FROM OBLIGATION. The purchaser of the business or stock of goods will be released from further obligation to withhold from the purchase price if the purchaser obtains a certificate from the Board stating that no taxes, interest, or penalties are due from a predecessor. The purchaser will also be released if he or she makes a written request to the Board for a certificate and if the Board does not issue the certificate or mail to the purchaser a notice of the amount of the tax, interest, and penalties that must be paid as a condition of issuing the certificate within 60 days after the later of the following dates:

- (1) The date the Board receives a written request from the purchaser for a certificate.
- (2) The date the former owner's records are made available for audit.

The certificate may be issued after the payment of all amounts due, including taxes, interest, and penalties, according to the records of the Board as of the date of the certificate, or after the payment of the amounts, including amounts not yet ascertained, is secured to the satisfaction of the Board.

(d) ENFORCEMENT OF OBLIGATION.

(1) The obligation is enforced by service of a notice of successor liability not later than three years after the date the Board receives written notice of the purchase of the business or stock of goods. The successor may petition the Board for reconsideration of the liability within 30 days after service. The liability becomes final, and the amount is due and payable, in the same manner as determinations and redeterminations of other diesel fuel tax liability.

(2) A successor may be relieved of any penalty included in the notice of successor liability regardless of when the notice was issued, if it is determined by the Board that failure by the successor to withhold a sufficient amount of the purchase price to cover the liability of the former owner was due to reasonable causes and circumstances beyond the control of the successor and occurred even though the successor exercised ordinary care and was not willfully negligent. A successor seeking relief of a penalty must file a written statement with the Board under penalty of perjury stating the facts upon which he or she bases the claim for relief.

(e) SEPARATE BUSINESS LOCATIONS. Where one person operates several business establishments, each at a separate location, each establishment is a separate "business" and has a separate "stock of goods" for purposes of determining the liability of a successor. A purchaser of the business or stock of goods of any such establishment is subject to liability as a successor with respect to that establishment even if he or she does not purchase the business or stock of goods of all the establishments.

Regulation 1421. *(Continued)*

(f) PURCHASE OF A PORTION OF A BUSINESS. A person who purchases a portion of a business or stock of goods may become liable as a successor as, for example, where the purchaser purchases substantially all of the business or stock of goods or where the business or stock of goods is purchased by two or more persons. In cases of doubt as to possible liability, the purchaser should obtain a certificate as provided in (c) above.

History: Adopted December 9, 1998, effective March 31, 1999.